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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re M.M., A Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SOPHIA C.,

Defendant and Appellant.

B243012

(Los Angeles County
Super. Ct. No. CK45164)

APPEAL from orders of the Superior Court of Los Angeles County,
Steven R. Klaif, Juvenile Court Referee. (Pursuant to Cal. Const., art. VI, § 21.).
Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant
and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel
and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Sophia C. (mother) appeals a juvenile court order terminating jurisdiction over her daughter, M.M., and awarding custody to T.M. (father). Mother contends the juvenile court erred in terminating jurisdiction without affording her an opportunity to engage in reunification services. Mother argues the court erroneously ruled under Welfare and Institutions Code¹ section 361.5(b)(10)² because subdivision (b)(10) only applies when the juvenile court previously ordered termination of reunification services for a sibling of the child. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Prior Child Welfare History

M.M. was born in April 2001. On April 18, 2001, the Department of Children and Family Services (the Department) filed a juvenile dependency petition alleging the juvenile court had jurisdiction over M.M. pursuant to section 300(b).³ The

¹ All further statutory references are to the Welfare and Institutions Code.

² Section 361.5(b)(10) provides that “[r]eunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, . . . (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.”

³ Section 300(b) provides a basis for juvenile court jurisdiction when the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child.

court sustained the petition finding that mother's use of drugs and alcohol endangered the child's health and safety, and father had a history of substance abuse that rendered him incapable of providing regular care for the child. The court placed M.M. with paternal grandfather and ordered that reunification services be provided to both parents. On July 31, 2002, the court ordered home of parent - father for M.M. and terminated family reunification services for mother. On March 4, 2003, the court terminated jurisdiction and issued a family law order giving father full physical and legal custody of M.M.

2. *Father Agrees to Joint Custody*

In approximately 2010, father consented to joint custody with mother after it appeared mother had made some progress. M.M. reported to father that "things were fine at her mother's" and that she wanted to stay with mother. Father agreed that M.M. could stay with mother during the week and spend the weekends with father.

3. *The Department's Involvement*

On February 28, 2012, the Department received a referral alleging general neglect and emotional abuse by mother. The caller reported that mother had been arrested for elder abuse of maternal grandmother. Department social workers thus began an investigation. M.M. reported that she had seen mother hit maternal grandmother and that mother also hit M.M. M.M. further stated that she did not always have food to eat at mother's place and that she only bathed at father's house because there were too many "bugs" in mother's apartment. Father reported that he was unaware that mother had hit maternal grandmother and M.M., or that M.M. was not

eating at mother's home. M.M. stated that she did not tell father that mother hit her because she was afraid the disclosure would upset mother.

4. *The Petition*

On March 27, 2012, the Department filed a juvenile dependency petition alleging the juvenile court had jurisdiction over M.M. pursuant to section 300, subdivisions (a)⁴ and (b). Counts a-1 and b-1 alleged that mother had engaged in "violent altercations against the child's maternal grandmother [] in the child's presence" and that father knew of mother's violent conduct and failed to protect M.M. Counts a-2 and b-2 alleged that mother "physically abused" M.M. and that father knew of this physical abuse and failed to protect M.M. Count b-3 alleged that mother "established a filthy home environment" that endangered M.M.'s physical health and safety. The petition was later amended to eliminate references to father based on the Department's finding that father did not know that M.M. or maternal grandmother were being harmed.

On the same day the petition was filed, the juvenile court found there was a prima facie case for detaining M.M. The court ordered that she be removed from mother's custody and released to father. Mother was granted monitored visits.

5. *The Department's Jurisdiction/Disposition Report*

On April 20, 2012, the Department filed a jurisdiction/disposition report. The Department found that the evidence supported counts a-1, a-2, b-1, b-2 and b-3 against

⁴ Section 300(a) provides that a child comes within the jurisdiction of the juvenile court when the child has suffered, or there is a substantial risk the child will suffer "serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian."

mother. The report stated: “It is apparent that the mother has unresolved anger issues, and has continued to utilize aggressive and/or violent tendencies to control the maternal grandmother and the child. . . . It also appears that there may be other factors that are contributing to the mother’s aggressive behavior, specifically, drug use and undiagnosed/untreated mental health disorder.” The report further stated that father “want[s] full legal and physical custody,” that “[w]ith regards to services, the father has indicated that he is not interested in receiving services from DCFS and keeping the case open,” and that “father presents as capable and willing to meet the child’s need[s] without DCFS intervention or support.”

6. *Jurisdictional and Dispositional Hearing*

On July 13, 2013, the juvenile court held a jurisdictional and dispositional hearing. At the hearing, the Department’s counsel asked the court to terminate jurisdiction under section 361.2.⁵ The Department’s and father’s respective counsel also argued the court could deny reunification services and terminate jurisdiction under section 361.5(b)(10) because mother had failed to reunify with M.M. in the prior child welfare proceedings. Mother’s counsel argued that section 361.2 did not apply because father was previously the custodial parent, and that section 361.5(b)(10) did not apply because mother had made efforts to ameliorate the problems that led to the filing of the

⁵ Section 361.2 provides that “[w]hen a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child.” (§ 361.2, subd. (a).)

original petition. The court indicated that it believed the Legislature's intent under section 361.2 was to give the court discretion to offer reunification services even when the child was placed with a previously custodial parent. The court also stated that it was denying reunification services under section 361.5(b)(10). The court declared M.M. a dependent of the court and terminated jurisdiction with a family law order giving father full physical and legal custody of M.M. The court indicated that both section 361.2 and section 361.5 supported the ruling.⁶ Mother was granted monitored visits in a therapeutic setting. Mother filed a timely appeal of the July 13 order.

CONTENTIONS

Mother argues that she is entitled to reunification services under section 361.5 and that the juvenile court's ruling that subdivision (b)(10) applied was an abuse of

⁶ "Mr. Steinberg [father's counsel]: Reunification services are discretionary, especially when we have an H.O.P. order. It's delineated in 361.2 as giving the power to close the case to a non-custodial parent. It doesn't make sense that the court would not have the power to close it on a custodial parent. [¶] The Court: I can't see that was the intent of the legislature that the reunification services would be discretionary if the court placed with a parent [sic] who was previously non-custodial but wouldn't have the same authority to deny them because that parent was custodial. [¶] Mr. Steinberg: Right. [¶] The Court: It doesn't make sense. [¶] Ms. Cottles [mother's counsel]: It may not make sense, but that is what it says. 361.2. [¶] Ms. Siporen [Department's counsel]: Your honor, given the recent -- [¶] The Court: Then I'll go on 361.5(b)(10). . . . The child is declared a dependent of the court and jurisdiction is terminated with a family law order giving the father sole legal and physical custody. Counsel, has their appellate rights. The court will be fascinated to see what the appellate court does on that. But I don't believe it was the legislature's intent to not make these services discretionary in this case."

discretion because this subdivision only applies when the juvenile court previously ordered termination of reunification services for a sibling of the child.⁷

DISCUSSION

1. Standard of Review

We review the juvenile court’s denial of reunification services for abuse of discretion. (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) “ ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) There is no abuse of discretion when the record contains substantial evidence supporting the findings and the decision. (*In re Kevin F.* (1989) 213 Cal.App.3d 178, 186.) “We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.” (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.)

2. Section 361.5

The juvenile court denied reunification services to mother under section 361.5(b)(10). Section 361.5(a) provides that, unless certain exceptions apply, “whenever a child is removed from a parent’s or guardian’s custody, the juvenile court shall order the social worker to provide child welfare services to the child and the

⁷ Although Mother did not raise this contention in the juvenile court, the Court has discretion to consider the issue. (*In re C.T.* (2002) 100 Cal.App.4th 101, 110 at fn. 7.)

child’s mother and statutorily presumed father or guardians.” (§ 361.5, subd. (a).) “[T]he section speaks in terms of ‘child welfare services’ (§ 361.5, subd. (a)) which consist of maintenance as well as reunification services (§ 16500 et seq.).” (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 165.) Section 361.5(b) sets forth the circumstances under which the court may deny reunification services to someone otherwise entitled to receive them.

Section 361.5’s language “implies that the statute does not apply when, at the disposition hearing, a child does not enter foster care, but is returned to a parent.” (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19)(noting that section 361.5 provides time limits on the provision of family reunification services “beginning with the dispositional hearing and ending 12 months after the date the child *entered foster care*. . . .” (Emphasis added.)) Accordingly, “section 361.5 is inapplicable when at the disposition hearing a child is returned to the custody of a parent.” (*In re Pedro Z.*, *supra*, 190 Cal.App.4th at p. 19.) Here, M.M. was returned to father’s custody at the disposition hearing, therefore, section 361.5 did not apply.⁸

⁸ As section 361.5 did not apply to the facts in this case, we need not express an opinion on the issue of whether subsection (b)(10) restricts the mandatory provision of reunification services when a parent has previously failed at reunification attempts with the child at issue. (*In re Gabriel K.* (2012) 203 Cal.App.4th 188) (holding that section 361.5(b)(10) authorized denial of reunification services to a mother who previously failed to reunify with the child himself); (*In re B.L.* (2012) 204 Cal.App.4th 1111) (holding that the previous termination of reunification services for the same child did not trigger the sibling exception to reunification services under section 361.5(b)(10)).

3. *Section 361.2*

The juvenile court also denied reunification services to mother under section 361.2. Mother does not make any arguments regarding section 361.2 and thus has forfeited the issue on appeal. (*Gunn v. Mariners Church, Inc.* (2008) 167 Cal.App.4th 206, 217-218.) In any case, as explained below, the juvenile court did not abuse its discretion in terminating jurisdiction and awarding full custody to father under section 361.2.

Section 361.2 provides that “[w]hen a court orders removal of a child pursuant to Section 361,⁹ the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child.”¹⁰ (§ 361.2, subd. (a).) “If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.”

⁹ Section 361 provides that “[i]n all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian”

¹⁰ “‘[N]oncustodial’ is often used as a shorthand term for ‘a parent of the child, with whom the child was not residing.’” (*In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1289.) A “noncustodial” parent is defined within the statute as one “with whom the child is not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300.” (§ 361.2, subd. (e)(1)) (providing that a social worker may place the child in “[t]he home of a noncustodial parent as described in subdivision (a)”). Although father had legal and partial physical custody of M.M. prior to the filing of the petition, he was a “noncustodial” parent for purposes of section 361.2 because M.M. was not residing with him at the time the abuse occurred.

(§ 361.2, subd. (a).) “If the court places the child with that parent[,], it may . . . order that reunification services be provided to the parent or guardian from whom the child is being removed.” (§ 361.2, subd. (b)(3).) Alternatively, the court may also “[o]rder that the parent become legal and physical custodian of the child . . . [and] provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child.” (§ 361.2, subd. (b)(1).)

Here, M.M. was residing with mother at the time the events arose that brought the child within the provisions of section 300, namely, the physical abuse of M.M., mother’s abuse of maternal grandmother in the child’s presence, and mother’s failure to maintain a clean home environment for M.M. In addition, father requested custody of M.M. Accordingly, section 361.2 applied because “there [was] a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desire[d] to assume custody of the child.” The court was required to place M.M. with father unless it found that such placement “would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).) Here, the petition’s allegations against father were stricken. There was no finding that placement of M.M. with him would be detrimental to her well-being. Therefore, the conditions set forth by section 361.2, subdivision (a) were met and subdivision (b) provided the court with discretion to order that father become the sole legal and physical custodian of the child and terminate jurisdiction.

Substantial evidence supports the finding that M.M. was not residing with father when the abuse occurred and that father requested custody of M.M. after the petition was filed. Therefore, the court did not abuse its discretion in terminating jurisdiction and awarding full custody to father under section 361.2.

DISPOSITION

The order is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.